IN THE HIGH COURT OF JUDICATURE AT BOMBAY

CIVIL APPELLATE JURISDICTION

SECOND APPEAL NO. 300 OF 1998

Ramgonda Genu alias Bhairu
Patil and others. ... Appellants.

Versus.

Babu Didhagopnda Patil & others. ... Respondents.

Shri M.R.Suryawanshi for the Appellants.

Shri D.S.Sawant for the Respondents Nos.1 to 5.

CORAM : ABHAY S. OKA, J.

DATED : 27th April, 2005.

P.C.:

1. Heard the learned Counsel appearing for the parties. Shri Suryawanshi submitted that in the Written Statement specific plea was taken by the Appellants of adverse possession. He submitted that the original Plaintiff admitted long standing possession of the Appellants. He urged that an issue is not framed on the basis of the plea of adverse possession by the trial Court. His next submission is that in view of the consolidation scheme under the Bombay Prevention of Fragmentation and Consolidation of Holdings Act, 1947, the Appellants were entitled to the disputed land and in the absence of any challenge to the scheme, decree for removal of encroachment could not have been passed.

2. I have considered the submissions. The plea of adverse possession in the Written Statement of the

Appellants is taken without prejudice to the other contentions of the Appellants on merits. The deposition of the Appellant No.1/Defendant No.1 shows that there is no assertion of hostile title. The evidence indicates that no attempt was made to substantiate the plea of adverse possession by the Appellants at the time of leading evidence. Mere long standing possession is not sufficient to establish adverse possession unless the other ingredients of adverse possession are established. The second contention of Shri Suryavanshi based on the provisions of the said Act of 1947 cannot be considered in a Second Appeal as I find that in both the Courts below the said contention is not raised.

3. There are concurrent findings of fact recorded by both the Courts below regarding encroachment committed by the Appellants. No substantial question of law arises. The Second Appeal is dismissed with no order as to costs.

Judge.